Advanced Architectural Metals, Inc. and its alter egos Advanced Metals, Inc. and Steel Specialties Unlimited, a single employer *and* Carpenters Local 1780, affiliated with Southwest Regional Council of Carpenters, United Brotherhood of Carpenters & Joiners of America and International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, Local 433, AFL–CIO, Party-in-Interest

Advanced Architectural Metals, Inc. and its alter ego Steel Specialties Unlimited, a single employer *and* Carpenters Local 1780, affiliated with Southwest Regional Council of Carpenters, United Brotherhood of Carpenters & Joiners of America and International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, Local 433, AFL–CIO, Party-in-Interest. Cases 28–CA–20730, 28–CA–20779, 28–CA–20885, and 28–CA–20918

December 27, 2007

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

On January 26, 2007, Administrative Law Judge Joseph Gontram issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief, which the Charging Party joined.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Advanced Architectural Metals, Inc. and its alter egos Advanced Metals, Inc. and Steel Specialties Unlimited, a single employer, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for the introductory paragraph of the Order.

"The Respondent, Advanced Architectural Metals, Inc., and its alter egos Advanced Metals, Inc. and Steel Specialties Unlimited, a single employer, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall jointly and severally."

Dated, Washington, D.C. December 27, 2007

Wilma B. Liebman,	Member
Peter C. Schaumber,	Member
Denis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Joel C. Schochet, Esq., for the General Counsel.
Gene O'Brien, Esq., for the Respondents.
Kathleen Jorgenson, Esq. (DeCarlo Connor Shanley), of Los Angeles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOSEPH GONTRAM, Administrative Law Judge. This case was tried in Las Vegas, Nevada, on October 10–12, 2006. The charges were filed March 24, 2006,[1] April 21, and June 28, and the consolidated complaint was issued July 31.

The complaint alleges that Advanced Architectural Metals, Inc. (AAM), established Steel Specialties Unlimited (SSU) as a disguised continuation of AAM and for the purpose of evading AAM's responsibilities under the National Labor Relations Act (the Act). The complaint similarly alleges that AAM established Advanced Metals, Inc. (AMI), as a disguised continuation of AAM and for the purpose of evading AAM's responsibilities under the Act. Accordingly, AAM, SSU, and AMI (the Respondents) are alleged to constitute alter egos and a single employer within the meaning of the Act.

The complaint alleges that the Respondents violated Section 8(a)(1) of the Act by interrogating their employees, making various threats to and against their employees including threats of physical harm, prohibiting their employees from engaging in union activities, disparaging their employees, informing their employees that they were discharged, denying their employees access to their tools, and assaulting their employees by driving a vehicle at the employees. These actions are alleged to have

[1] In sec. III, A (1), par. 7, of the judge's decision, the judge stated that: "After the Union won the election to represent AAM's employees, [Lori] Irish gradually transferred AAM's fabrication and installation functions to AMI and SSU, respectively." The record shows that the Respondent, in fact, began transferring work to its alter egos following an April 2004 strike of unit employees. The judge's error does not affect our adoption of his findings here.

[2] The Respondent's exceptions to the judge's findings of 8(a)(1) violations fail to comply with Sec. 102.46(b)(1) and (2) of the Board's Rules and Regulations, which set forth the Board's requirements for excepting to an administrative law judge's decision. In any event, we adopt these 8(a)(1) findings for the reasons the judge stated.

[1] All dates are in 2006 unless otherwise indicated.

occurred because of the employees' union activities and in violation of the employees' rights under Section 7 of the Act.

The complaint alleges that the Respondents violated Section 8(a)(3) and (1) of the Act by discharging and failing to reinstate 16 employees because of those employees' union and protected activities. The complaint also alleges that the Respondents violated Section 8(a)(5) and (1) of the Act by repudiating and unilaterally failing to continue in effect all of the terms and conditions of the agreement between the Respondents and the Carpenters Local 1780, affiliated with the Southwest Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America (the Union or Charging Party).

The complaint alleges that SSU violated Section 8(a)(2) and (1) of the Act by recognizing and entering into a collective-bargaining agreement with Iron Workers Local 433 even though (1) Iron Workers Local 433 did not represent an uncoerced majority of the bargaining unit employees, and (2) the Union was the recognized exclusive bargaining representative of the employees in the bargaining unit.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondents,[2] I make the following

FINDINGS OF FACT

I. JURISDICTION

AAM, a Nevada corporation with a principal place of business in Las Vegas, Nevada, is a fabricator and installer of ornamental metals. During the 12-month period ending March 24, 2006, AAM purchased and received goods valued in excess of $50,000 directly from points outside the State of Nevada. AAM admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.[3]

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background[4]

Earl Jerome Wallace started AAM in 1996. AAM fabricates and installs ornamental metals primarily for casinos and other large retail customers. On May 30, 1997, AAM signed a memorandum of agreement recognizing the Union as the exclusive bargaining representative of a unit of carpenters, fabricators, machine operators, and laborers at AAM's Las Vegas facility, which is located at 5335 Wynn Road, Las Vegas, Nevada.[5] This single bargaining unit consists of the fabrication or "shop" employees and the construction or "field" employees.

Shortly after signing the agreement with the Union, AAM became a signatory to the 1995–1998 master labor agreement (MLA), a multiemployer agreement with the Union. In 1997, AAM and the Union also signed an agreement that became known as the "shop agreement." Under the shop agreement, shop employees and field employees received different wages and benefits—the shop employees were paid under the shop agreement and the field employees were paid under the MLA. Since 1997, AAM and the Union have signed a series of collective-bargaining agreements, the most recent being the shop agreement effective from March 2004 to June 30, 2007.

In 2000, Wallace sold AAM to the Lortex Trust, of which Lori Irish is the sole trustee. Pursuant to the terms of the trust, Irish has "[t]he power to direct, control, supervise, manage, or participate in the operation of the business . . . the power to engage, compensate and discharge, or as a stockholder owning the stock of the Corporation, to vote for the engagement, compensation and discharge of such managers, employees, agents, attorneys, accountants, consultants or other representatives . . ."

After Wallace's sale of AAM in 2000, he stayed with the Respondent as a general manager until 2004. However, after the sale, the relationship between the Union and management, namely Irish, became strained and antagonistic. Irish has exhibited her union animus in the past, as well as her crude and belligerent attitude toward union and concerted activity. The strained and antagonistic relationship between the Union and Irish was due primarily, if not exclusively, to Irish's animus. This animus, belligerence, and antagonism were vividly and disturbingly demonstrated and confirmed by Irish's statements and voice mail messages to employees Joseph King and John Bieschke after the bargaining unit employees had decided to engage in a work stoppage on July 22 and 23. Similarly, Irish made threatening statements to Matthew Burdett on the day the present hearing started. These statements and messages are addressed below.

Indeed, Irish's acrimony and bitterness toward the Union and its members were the motivating factors for the Union's insistence on a "Labor Harmony" clause in the most recent collective-bargaining agreement between the Union and AAM. (GC Exhs. 6 and 9.) That clause provides, in part:

> In order to promote labor harmony in the workplace and avoid further conflict, Lori Irish shall not harass any shop or field employee covered by this agreement or commit, by action or inaction, any conduct which a reasonable person in the employee's position would consider harassment.

On February 2, 2006, AAM sent a letter by fax to the Union in which AAM stated, "Since you choose to act illegally by

[2] The parties' briefs were due on or before November 22, 2006. The Respondents' brief was mailed on November 22, but was not received by the Division of Judges until November 27. The General Counsel has filed a motion, joined by the Union, to strike the Respondents' brief because of untimely filing. The General Counsel does not allege that it has suffered any prejudice because of the Respondents' untimely brief. The Respondents' action in failing to timely file their brief is not condoned. However, under all the circumstances, the General Counsel's motion is denied.

[3] The Respondents have not denied that the Union is a labor organization within the meaning of the Act.

[4] Some of the background and explanatory facts are taken from the findings of the administrative law judges in *Advanced Architectural Metals, Inc*., 2006 WL 1358754 (NLRB Div. of Judges 2006) and *Advanced Architectural Metals, Inc*., 2002 WL 31863540 (NLRB Div. of Judges 2002). *See Stark Electric, Inc*., 327 NLRB 518, 518 fn. 1 (1999).

[5] The Wynn Road address is the same address as 4145 Hacienda Road, Las Vegas, Nevada, which was changed to 5335 Wynn Road in January 2006 after an overpass was constructed in front of the building.

threatening people's lives and the lives of their children, we choose to respond in federal court. Furthermore, AAM, Inc. does not believe we have a legally binding contract and will let a federal judge decide the matter." (GC Exh. 10.) There is no evidence in this case, by implication or otherwise, that the Union or any of its officials have ever threatened anyone, including anyone associated with AAM. The same cannot be said about Irish. AAM's letter repudiates the collective-bargaining agreement between the Union and AAM. The letter is unsigned, but the language of the letter is consistent with the language and statements of Irish.

B. Formation and operation of SSU and AMI

1. SSU

The General Counsel subpoenaed Irish to testify in the present hearing. (GC Exh. 17.) Irish could have provided testimony about the formation of AMI and SSU, the actual and record owners, officers, and operators of AMI and SSU, the purpose(s) for which AMI and SSU were created, and her actions relating to the unfair labor practices alleged in the complaint. Irish refused to appear pursuant to the subpoena.

The General Counsel also subpoenaed Susanne Kennard. (GC Exh. 20.) Kennard is listed as the president of SSU in the documents filed with the Nevada Secretary of State. (GC Exh. 16.) Kennard is the office manager for the Mat Su Dental Clinic in Alaska, which is owned by Irish. (Irish was formerly a dentist, but she no longer practices dentistry.) Kennard could have provided testimony about the formation of SSU; her involvement, if any, and Irish's involvement in the formation and management of SSU; and any information she may have concerning the operation of SSU. Kennard refused to appear pursuant to the subpoena.

SSU was formed on April 23, 2004, 1 week after Irish signed a settlement agreement with the Union to resolve matters that had led to an 8-day strike in April 2004. Kennard is listed as the president, treasurer, and secretary of SSU. There is no evidence that Kennard ever participated in any managerial or nonmanagerial decisions or discussions at SSU. And, there is no evidence that Kennard ever received any money or payments from SSU or ever invested any money in SSU. There is no evidence that Kennard has ever been to Las Vegas.

The only action that Kennard may have taken on behalf of SSU was to sign some SSU documents or checks that were sent to Kennard by or at the direction of Irish. However, the record does not establish that Kennard actually signed any documents or checks on behalf of SSU. Also, Irish copied Kennard's signature onto documents or checks. Moreover, a stamp of Kennard's purported signature was kept at SSU's offices and was used to "sign" checks and documents. There is no direct evidence that Kennard ever signed any SSU check or any other SSU document, and in light of Kennard's and Irish's refusal to honor the subpoenas served on them, I conclude that Kennard did not sign any SSU checks or documents, and that all of the checks and documents purporting to contain Kennard's signature were "signed" by Irish or at Irish's direction.

SSU was initially capitalized with an April 2004 loan from the Colby Gormley Irish Trust in the amount of $475,000. Irish subsequently transferred an additional $25,000 from the trust to SSU. Irish is a trustee of this trust, which is in the name of her son. It is not clear how these funds were used in SSU's initial capitalization or operation. In March 2005, SSU transferred $75,000 to AAM. SSU recognized Iron Workers Local 433 in approximately January 2005.

SSU is engaged in the same operation and performs the same construction work as AAM. SSU's business address is the same as the business address for AAM, viz., 5335 Wynn Road, Las Vegas, Nevada. SSU did not begin operating until at least September 2004 when it obtained its license from the State of Nevada. Nevertheless, the Union did not learn of the existence of SSU until January 2006. Accordingly, SSU had no working capital requirements until 5 months, or later, after the Colby Gormley Irish Trust loaned or contributed $475,000 to SSU.

Irish might have been able to explain the purpose of the $475,000 loan to SSU from the trust she administered, but she refused to appear pursuant to the subpoena served on her. Under the evidence and all of the circumstances, I conclude that Irish created SSU, and she placed trust funds in SSU. Irish also made Kennard, an employee of Irish's dental clinic in Alaska, the nominal president of SSU, to conceal, in part, Irish's exclusive authority over and ownership of SSU. Irish makes all of SSU's business decisions, including personnel matters. As Union representative James Sala testified, Irish funded and ran SSU. (Tr. 87.)

SSU's operations are limited to the construction and installation of metal products, as distinguished from AMI whose operations are limited to the fabrication of metal products. When SSU began operating, its business was obtained directly from AAM's existing projects. SSU and AAM possessed similar licenses from Nevada,[6] and both companies did the same work involving the construction and installation of ornamental metals. Moreover, SSU and AAM obtained the fabricated metals that they installed from the same source, viz., AAM. SSU has increasingly used Universal Brass, rather than AAM, as its source of fabricated metals. Presently, SSU does no business with AAM.

After SSU completed AAM's remaining work, it obtained work, in part, through Irish and through John Bentley, a longtime employee of AAM, just as Irish and Bentley had obtained work for AAM. Pickens, SSU's qualified employee, foreman, general manager, and secretary of the corporation, also referred business to SSU. A qualified employee is an employee who possesses the state license under which the company is permitted to engage in the particular work, such as the installation of ornamental metals. Pickens is a member of the Iron Workers Union.

Pickens oversaw the work in the field. He claimed to have an office at 6130 West Flamingo, Las Vegas; however, that address is a postal annex address. (GC Exh. 21.) In fact, the only office utilized by Pickens on behalf of SSU was AAM's office. Pickens went to AAM's office every week to pick up SSU's employees' payroll checks from Irish. Irish and Pickens also

[6] AAM and SSU possessed Nevada licenses to perform ornamental metal installation. SSU also possessed a license to perform structural steel installations. However, there was no credible evidence of the extent to which, if at all, SSU performed structural steel installations.

had authority to sign checks on SSU's bank account. However, Pickens and Irish had a disagreement in December 2005, and after that disagreement, she removed his authority to write checks on the account. In January 2006, Irish terminated Pickens' employment with SSU.

In January 2006, Ken Wilson, the shop manager for AAM, arranged a meeting with the Union to discuss the emergence of SSU as the entity that would be doing the work and projects that AAM had previously done. Present at the meeting were Sala, Wilson, Pickens, and Jacqueline Phillips. Phillips managed AAM's specialties division, which was responsible for bathroom partitions. Phillips began her employment for AAM in 2004. Pickens disclosed in this meeting that SSU was performing the same work that AAM performed. Pickens also admitted that SSU was obtaining business from AAM and from Universal Brass, AAM's competitor.

Don Luster is a field supervisor and a corporate director of SSU. He was hired by Irish to oversee SSU's operations. In some of the jobs that he supervised for SSU, he supervised AAM's employees. When Luster used an office, he used AAM's office. The Venetian and the Las Vegas Hilton Timeshare are among SSU's projects that AAM's employees worked on.

Chattawa Blake worked for AAM from March 2005 to June 2006. Irish hired Blake as a receptionist, but Blake's duties expanded to include bookkeeping and payroll. Tina Constantine worked for AAM in a similar capacity. As part of their duties, Blake and Constantine signed pre-lien contracts for SSU. They also handled SSU's payroll. Irish told Constantine that Irish owned SSU and that SSU performed AAM's work, but she asked Constantine to keep this information quiet because Irish did not want other people to know that Irish owned SSU. Constantine terminated her employment with AAM in June 2005. Irish then hired a new bookkeeper, who did SSU's and AAM's books.

Irish hired Phillips in 2004 to manage the specialties division of AAM. Phillips later started receiving paychecks from SSU, and she now claims to work only for SSU as the manager of SSU's specialties division. Phillips' duties at SSU are the same as her duties at AAM. For a period of time, Phillips received paychecks simultaneously from SSU and AAM. There is no evidence that Phillips resigned her position at AAM before she started working for SSU, nor is there any evidence that Phillips completed any paperwork before transferring her employment from AAM to SSU.

SSU used and occupied the same office as AAM. The office employees who performed work for SSU and AAM, such as Irish, Blake, Constantine, and Phillips, performed their work from the same desk whether they were working for SSU or for AAM. SSU used the same facsimile machine and number as AAM.

Phillips testified at the hearing and was the Respondents' only witness. However, Phillips was not a credible witness. She had a selective memory, which depended on whether her testimony could benefit or harm the Respondents' position regarding the affiliation of Irish with AAM, SSU, and AMI. To cite one example, Phillips testified that she prepared an amortization schedule for SSU's startup "loan" from the Colby Gormley Irish Trust. Phillips wrote a check for $18,000 on the SSU account totaling 11 monthly payments to the trust. Phillips allocated that payment to principal and interest in accordance with her amortization schedule. Phillips claims that she performed these actions without instructions from anyone. However, it is not credible that an employee in Phillips' position would, or would be authorized to, write such a check and to assign the amounts to principal and interest, without authorization from the owner or president of SSU, as well as the trustee of the trust. Indeed, when Phillips provided this incredible statement, she lowered her voice, as she did several times during her testimony. (See Tr. 441.) Phillips would not have written such a check without Irish's authorization, and her incredible testimony shows her intent to insulate Irish from involvement in the affairs of SSU.

Another example of Phillips' incredible testimony is her statement that she does not report to anyone in her job as the manager of the specialties division of SSU. (Tr. 457–458.) This denial is ridiculous. Even the president of the company, assuming there were a real president rather than a merely nominal president, would have to report to the owner of the company. Phillips appeared as a person who was under strict orders to deny or disavow any connection between Irish and Irish's companies, and she followed those orders, or her own bias, without regard to accuracy or plausibility.

2. AMI

In December 2005, Irish faxed a handwritten message to the Union in which she stated that the manufacturing part of AAM's business was being sold. The Union attempted to meet with Irish to discuss the effects of this sale, but Irish refused to meet.

In approximately January 2006, Irish announced to the employees of AAM that she had sold the manufacturing part of AAM. The new company that allegedly owned and operated the shop was AMI. She said that the employees' wages would remain the same, but the shop was no longer going to be union. She said she would look into the possibility of health care for the employees. Several days later, Irish urged the employees to obtain a particular health insurance that she was advocating, and she distributed forms for the employees to sign in order to obtain this insurance. (GC Exh. 30.)

Payroll checks were distributed to the employees after this meeting. The checks were from AAM and AMI, representing work in the shop (AMI) and work in the field (AAM). The employees who had worked in both the shop and the field during the payroll period received two checks, one from AMI and one from AAM. Irish signed all of the checks. Thus, the employees of AAM became employees of AMI by Irish's announcement that the manufacturing part of AAM's business had been sold to AMI, and by her unilateral action in opening a bank account in AMI's name and distributing payroll checks from that account to AAM's employees.

The Nevada Secretary of State lists Irish as the president and secretary of AMI. AMI has the same address as AAM. The employees of AAM and AMI are virtually identical. (U Exh. 9 and 10.) Moreover, the work performed by the employees of

AAM did not change with the interposition of AMI. However, Irish told the employees that under the new "owner," the shop would not be union.

There is no credible evidence that Irish ever sold the manufacturing part of AAM. In the 2006 case involving AAM, *Advanced Architectural Metals, Inc*., 2006 WL 1358754 (NLRB Div. of Judges, May 15, 2006), AAM was ordered, among other things, to provide the information requested by the Union relating to Irish's purported sale or transfer of AAM.[7] However, AAM has failed to produce any information that the administrative law judge ordered to be produced relating to the alleged sale. In addition, AAM received a subpoena in the present case to produce, among other things, documents "that reflect the purported sale or other transfer of [AAM]" and "that reflect the establishment and/or purchase of Respondent [AMI]." (GC Exh. 23.) AAM produced no documents pursuant to this subpoena.

Irish told Blake that Mark Cleveland owned AMI, and that AMI had purchased AAM's manufacturing facilities. Irish said that Cleveland lived in the Cayman Islands, where he and Irish allegedly own condominiums in the same building. Irish established a bank account in the name of AMI, and she instructed Blake to add Cleveland's name to that account. Cleveland's signature was placed on the first payroll checks from AMI. However, the bank rejected Cleveland's name because the social security number that Irish provided to the bank for Cleveland was false. Irish signed AMI checks after the bank rejected Cleveland as a signatory.

Blake performed work for AMI, including recordkeeping and payroll, similar to the work she performed for AAM and SSU. AMI used the same facsimile machine and number as AAM and SSU. AMI's offices were in the same location as the offices of AAM and SSU. Joseph King worked for AAM from 2003 until July 2006. King worked as a polisher and a foreman. Like AAM's other employees, he worked in the shop and in the field. And, like AAM's other employees, from January 2006 until his termination in July 2006, King was paid by checks from AAM for work in the field and from AMI for work in the shop. Irish signed all of the checks.

King also performed work at Bridal Elegance, a bridal shop owned by Irish, which is located approximately two blocks from the offices of AAM, SSU, and AMI. However, he was paid for this work by AAM or AMI, not Bridal Elegance. On the other hand, Bridal Elegance paid King for work that King and other AAM employees performed for AAM at the Venetian, a local casino. Dave Giron, King's foreman at AAM,[8] had assigned King to the Venetian job. When King arrived at the job, he worked under the supervision of Luster, a supervisor at SSU. Moreover, although Bridal Elegance paid King for his regular time on the Venetian job, SSU paid King for his overtime on that job. In 2005, King worked another job that had been assigned to him as an employee of AAM, but SSU paid him for this work. All of these jobs worked by King involved the same type of work that King performed for AAM. Irish signed all of the payroll checks.

King was a foreman for AAM and, starting in January 2006, was also a foreman for AMI. After AMI started paying King and the other AAM employees for shop work, Irish called King into her office and asked him to speak to the field crew, i.e., the AAM employees, about a matter. King told Irish that he could not because, at that particular time, he was working for AMI. Irish retorted, "You know perfectly f—ing well who you work for." Irish then removed King from his foreman position.

As an employee of AAM, Blake performed work for Bridal Elegance, including accounts payable and payroll. Blake was paid by AAM for her work at Bridal Elegance. However, Bridal Elegance did issue paychecks to Blake, but these paychecks were for overtime work that Blake had performed for AAM.

Funds were routinely transferred between and among AAM, SSU, and AMI for payroll and other purposes. Funds were also routinely transferred between Irish and AAM, SSU, and AMI, between the Colby Gormley Irish Trust and AAM, SSU, and AMI, and between Irish's other companies (such as Bridal Elegance and the Mat Su Dental Clinic) and AAM, SSU, and AMI. Irish wrote and authorized checks on the dental clinic's account and deposited the money into AAM's account for purposes of payroll. Irish wrote and authorized checks from Bridal Elegance's account into the accounts of AAM and AMI. Irish wrote checks on the Colby Gormley Irish Trust account and transferred the funds to AAM for payroll. Irish wrote checks on her personal account for deposit to AAM for purposes of payroll. Checks from SSU were deposited into AAM's bank account.

The transfers between Irish and the various entities she owned or controlled were listed as loans on the entities' books. However, there is no evidence that the loans were accurately recorded or repaid; nor is there any documentation or evidence of the terms of such loans.

C. Alleged Unfair Labor Practices and the July 2006 Strike

In two prior cases, AAM was found to have committed unfair labor practices in violation of Sections 8(a)(1), (3), and (5) of the Act. (See fn. 5.) The hearing in the second case was held on March 22, 2006. The day before that hearing, Irish announced on the shop floor that any employee who went to the hearing to testify without first getting permission from her would be fired. On the morning of the hearing, AAM employees Joseph King and Rodney Achrem received subpoenas from the Board compelling their attendance at the hearing that day. King and Achrem handed their subpoenas to Richard Wright, the plant manager and vice president of AAM. Irish was notified of the subpoenas, and she approached Achrem and told him that if he had any problems, he should talk to her, "not to the stupid union." (Tr. 211.) King testified pursuant to the subpoena; Achrem did not.

Irish was upset that King and another employee testified at the March 22 hearing. After the hearing, Irish told AAM's em-

[7] On July 7, 2006, the Board ordered enforcement of the administrative law judge's order after AAM filed untimely exceptions to the order.

[8] Giron had the authority to hire, fire, and discipline employees, and to assign work. Moreover, the Respondents did not deny the complaint's allegations that Giron was a statutory supervisor and agent of AAM. Accordingly, I find that Giron was a statutory supervisor and agent of AAM pursuant to Sec. 2(11) and (13) of the Act.

ployees that she had disparaged them to the (alleged) purchaser of AAM's manufacturing business,[9] and had told the (alleged) purchaser "to get the hell out of town." (Tr. 211.) Irish told the employees that she was going to sell the building and do the manufacturing in another State. She said she would find work for the "loyal" employees, but anyone else should find another job. Irish looked directly at King when she made this latter statement.

Beginning in September 2005, AAM stopped processing grievances that were submitted by or on behalf of the Union. Since January 2006, AAM, through Irish, has refused to accept mail from the Union, including all grievances. The collective-bargaining agreement between AAM and the Union provides for a wage increase in April 2006. AAM failed to grant this wage increase. In the period between January and July 2006, AAM unilaterally changed the work schedule of AAM's employees from 6 a.m.–2:15 p.m. to 6 a.m.–2:30 p.m. by eliminating the employees' last break. Irish also unilaterally imposed a 90-day waiting period before employees became eligible for holiday pay. In approximately December 2005, AAM stopped paying health, pension, vacation, and other benefits, which the agreement required AAM to pay.

AAM employees worked on Sunday, July 16. Giron told Bieschke that the employees might not receive double time, as required by the agreement, for working the previous Sunday. Bieschke relayed this message to his coworkers. On Friday, July 21, the employees received their paychecks, which covered the previous Sunday, and they knew that AAM was again violating the agreement by failing to pay double the hourly wage for Sunday work. The employees decided to have a meeting after work, and they called the Union. The meeting was held on the side of AAM's building at 5335 Wynn Road, and was attended by the bargaining unit employees, together with Giron and Sala.

At the meeting, the employees raised and discussed various complaints about Irish's violations of the agreement, her unilateral changes in their working conditions, and the Union's failure to rectify these complaints. Sala reminded them that Irish had refused to accept or process grievances since the previous September. The employees also complained about Irish funneling their work to SSU, which was located in the same building as AAM. The employees asked Sala if they could strike. He said they could because of AAM's unfair labor practices that the employees had been discussing. However, Sala cautioned the employees on striking, advising them of possible adverse consequences even though they had a right to strike. The employees took a vote, and every bargaining unit employee voted to strike, with one employee not voting. Giron did not vote.

The employees agreed to strike on Saturday and Sunday, and return to work on Monday morning. Giron, who was present throughout the meeting, told the employees to return to work on Monday morning at 4 a.m.

On Saturday, July 22, Irish called King several times, and left voice mail messages on his telephone. In one of Irish's voice messages to King, she threatened to fire him if he went on strike. In another message, Irish told King that he was fired. In another voice mail message, Irish threatened that she would harm King and any coworkers who might be on the picket line. Irish threatened to run over these employees with her truck. On Sunday evening, July 23, Irish called King. She again fired him, and she threatened to shoot him. She told King, "I've got a gun and if any of yous [sic] are on my property, I'll shoot yous [sic]. I'll shoot you dead." (Tr. 78.) Irish blamed King and Bieschke for being union instigators.

John Bieschke, a bargaining unit employee who was a fabricator and installer, also received voice mail messages from Irish on July 22, 23, and 24. (GC Exh. 43.) In those messages, Irish told Bieschke that he was fired, she disparaged the Union, she disparaged Bieschke, and she threatened Bieschke with physical harm as she had threatened King.[10]

All of the employees returned to work on Monday, July 24, at 4 a.m., as Giron had instructed. They met outside the building. Irish came out of the building and said that all the employees were fired, except for any employee that had not been scheduled to work the previous weekend. Karl Hughes was the single employee who had not been scheduled to work that weekend, but he told Irish that he supported his coworkers, and Irish told him that he was also fired. The employees who were present and who were fired by Irish are the following:

1	Laurencia Alvarez	2	John Barrington
3	John Bieschke	4	Matthew Burdett
5	Isaac Corona	6	Cesar Gasca
7	Juan Gasca	8	Juan Gasca, Jr.
9	Glenn Davis	10	Jose Hernandez
11	Karl Hughes	12	Joseph King
13	Joseph Kline	14	Victor Mendoza
15	Felipe Torres	16	Tirso Vega
17	Matt White		

The employees asked Irish to allow them to retrieve their tools, which the employees needed to be able to work with another employer. Irish refused the employees' request, saying that she would return their tools after she completed a casino job in Mississippi, a job that AAM was capable of doing and previously would have done. However, Irish had assigned this job to SSU.

[9] Irish told the purchaser that AAM's employees were "mother fuckers" and "backstabbing cock suckers." (Tr. 212.) Irish uses profanity quite often when dealing with or talking about her employees. I will not belabor this decision with her language except, when quoting her, to substitute "f—" for her most favored profanity.

[10] Among the statements Irish made to Bieschke on his voice mail are the following:

John, you're fired. You're a no-call/no-show, so you're fired. You don't have a job. You dumb asses. If you [were] the Iron Workers, you would have jobs. You dumb asses.

Hey, ball-less Bieschke. I heard that you were the chief instigator. [unintelligible] don't have f—ing balls, go behind my back. You little f—ing ball-less bald guy. You're disgusting. . . .

F—ing loser. Get a f—ing job. Over my dead body will I ever have f—ing losers. I got a gun and if any of you come near me and I fear for my life, and God knows I've got enough [unintelligible], I'll f—ing shoot anyone if I fear for my life. I went over with the cops what I can do, so I dare you to [unintelligible] I dare you, f—ing loser. Get a job.

After Irish refused to return the employees' tools, and while the employees continued to request the tools, the police arrived. After the police arrived, an agreement was reached between Irish and the employees that she would allow the employees to retrieve their tools at 3 p.m. that afternoon. Throughout this period, no employee or union official made any threat or intimation of violence or improper conduct.

The employees returned at 3 p.m., but Irish still refused to return their tools. Irish told the employees that they could not enter the AAM building, so they remained in the parking lot trying to decide what to do. Suddenly, Irish started a truck, which was used by Don Luster of SSU, and drove the truck at a high rate of speed directly at King, who was standing with the other employees in the parking lot. King ran for cover behind another vehicle. Irish stopped her truck, yelled obscenities at the employees, and screamed that she would not return any of their tools. Sala was present with the employees during this time, and he then called the police. After the police arrived, Irish returned the employees' tools, although some tools were missing.

The next day, Tuesday, July 25, the employees set up a picket line for the first time. The picket line was on the sidewalk and across the driveway entrance to AAM's facility at 5335 Wynn Road. Sala was also present, and the picketers carried signs stating that the picket line was due to AAM's unfair labor practices. Soon after the picket line began, Irish came out of the building, yelled at the employees, and said that she had a big truck and if the employees got in her way, she would run them over. She then got into her truck, and drove directly at Sala, who was standing on the sidewalk, away from the driveway. Irish had to veer off the driveway and onto the sidewalk as she drove her truck at Sala. She stopped her truck within inches of Sala's body. Sala reflexly put his arms out, and her truck hit his hands. Fortunately, a post in the sidewalk stopped Irish's further progress at Sala. Irish then turned her truck toward the employees who were picketing on the sidewalk. She drove her truck into the group without hitting anyone, and, while the employees scattered, she exited the truck, left the motor running, and entered the facility. As she exited the truck, Irish continued shouting obscenities at the employees and again told them that they were fired.

Sala called the police after these events. He believes that Irish also called the police. Approximately five police officers arrived in four police cars. Sala told the police that he wanted to press charges against Irish, but the police did not respond. The police did warn Sala against blocking the driveway to AAM's parking lot. The police remained at the facility for approximately 1½ hours, spending all but 10 minutes inside the facility with Irish. After the police left, Irish stood at the front door of the facility and held a video camera, which she pointed at the picketers as if she were recording their activities.

Irish then went inside to her office, and she telephoned Bieschke, who was on the picket line, on his cell phone. Irish knows that Bieschke has a small child because she had previously allowed him to leave work early, without pay, to pick up his child from school. When Bieschke answered his cell phone, Irish told him, "I'm going to blow your f—ing kid's head off." (Tr. 366.) She repeated this threat three times.

The next morning, Wednesday, July 26, Irish again drove her truck out of the parking lot at a high rate of speed directly toward the picketers, almost hitting them. Sala called the police. Three police officers came. They went into the facility for a brief period. The police came out and talked to the employees, again telling them to not block the driveway. The police remained at the facility for about one half hour.

Thereafter, when entering the facility early in the morning, Irish would typically drive her car at a high rate of speed, turning into the driveway with abandon. Incidents of Irish driving recklessly and deliberately at the picketers occur almost daily. The picketers now post lookouts at the end of the street to warn the picketers when Irish is coming so they can remain well clear of the driveway entrance to avoid injury. The picketing has continued to the date of the present hearing.

The hearing in the present case was held on October 10–12, 2006. On October 10, Irish called Matthew Burdett. She told him that he was the only picketer that she would reinstate, but she would shoot John Bieschke before she would let him back. She said that before King or Bieschke could come back to work for her, it would be over her or "someone's" dead body. (Tr. 402.) Irish told Burdett that she could walk down to the picket line with a pistol and start shooting, and that she would start with Bieschke and keep firing.

Irish's threats to Burdett were particularly threatening to him. Burdett worked for AAM for 8 of the last 10 years. He has observed Irish give only several warnings during that period, and she has carried out every such warning. He believes that her threats to him were warnings.

Irish called Bieschke on October 10, the day before his testimony at the hearing. She told him, "I'll blow your f—ing brains out before I hire you back." (Tr. 370.)

III. ANALYSIS

A. Single employer

The determination of whether two or more entities are sufficiently integrated to be deemed a single employer depends on all of the circumstances of the case. The inquiry focuses on whether the entities' total relationship reveals (1) centralized control of labor relations, (2) common management, (3) interrelation of operations, and (4) common ownership. *Radio Union v. Broadcast Service of Mobile, Inc*., 380 U.S. 255 (1965); *Flat Dog Productions, Inc.,* 347 NLRB No. 104 (2006). The first three factors are the most significant, and the first factor—centralized control of labor relations—is "of particular importance because it tends to demonstrate 'operational integration.'" *RBE Electronics of S.D., Inc*., 320 NLRB 80, 80 (1995); *Mercy Hospital of Buffalo*, 336 NLRB 1282, 1283–1284 (2001). However,

> No single factor in the single-employer inquiry is deemed controlling, nor do all of the factors need to be present in order to support a finding of single-employer status. 'Rather, single-employer status depends on all the circumstances, and is characterized by the absence of the arm's-length relationship found between unintegrated entities.'

Flat Dog Productions, Inc., 347 NLRB No. 104, slip op. at 2–3 (2006).

Centralized control of labor relations. Irish controls the labor relations of AAM, AMI, and SSU. She hires and fires the employees and supervisors of these entities. Indeed, there is no evidence that anyone other than Irish hired and/or fired any employee or supervisor involved in this proceeding. She hired and fired Pickens, the general manager of SSU and its corporate secretary, she hired Luster, a field supervisor and a corporate director of SSU, she hired Phillips, who managed AAM's and SSU's specialties divisions, and she hired Blake, who worked as a receptionist and bookkeeper, and handled the payroll, for AAM and SSU. And, Irish fired all bargaining unit employees in July.

Irish created AMI to do the fabrication work previously done by AAM. She created AMI, either out of whole cloth or as a subterfuge in conspiracy with her fellow condominium owner from the Cayman Islands. Irish's subterfuge in creating AMI was to enable her to transfer the work done by the unionized employees of AAM to the nonunion AMI. However, the same employees of AAM did the same work before and after the alleged creation of AMI, and these employees were at all times under the control of Irish.

Common management. Irish manages and controls AAM, AMI, and SSU. She told her employees that she sold the fabrication portion of AAM to AMI, but her management and control of that fabrication business, as well as the construction business, remained unchanged without regard to whether she actually sold it. Irish also siphoned AAM's construction business to SSU, but again, the management and control of the construction side of the business, whether at AAM or SSU, remained with Irish. Irish signs the payroll checks for all three corporations.

Common management also extends to lower level managers. AMI and AAM had the same foremen. Also, AAM and AMI employees worked under the supervision of SSU managers, such as the Venetian job where King was assigned to the job by Giron, King's foreman at AAM, and was supervised on the job by Luster, a supervisor at SSU.

Common ownership. The Lortex Trust owns AAM. Irish is the only trustee of that trust. Irish financed the creation of SSU by a loan or payment in the amount of $475,000 from the Colby Gormley Irish Trust. Irish is also the trustee of that trust. She claimed (or threatened her employees) that she sold the fabrication portion of AAM to AMI, and that a person named Mark Cleveland had purchased AMI. However, there is no evidence that a sale actually took place and there is no evidence of any involvement by Mark Cleveland in the affairs of AMI. See also *Advanced Architectural Metals, Inc*., 2006 WL 1358754, p. 17 (NLRB Div. of Judges 2006) (in which the judge observed that "there is no proof that a bona fide sale has ever occurred.")

Interrelation of operations. AMI and SSU perform the same work as AAM performed before AMI and SSU were created. After the Union won the election to represent AAM's employees, Irish gradually transferred AAM's fabrication and installation functions to AMI and SSU, respectively. AAM and AMI have the same address and operate from that same facility. SSU also operates from the same facility as AAM and AMI. Accordingly, the operations of AAM, AMI, and SSU are functionally integrated.

There is also an absence of an arm's-length relationship between AAM, AMI, and SSU. For example, AAM employees are assigned by AMI supervisors to work on installations for SSU. Thus, the employment relationship between the employees and AAM, AMI, and SSU is confused. In addition, funds are routinely transferred among AAM, AMI, and SSU, and between Irish and her other controlled entities (the two trusts, Bridal Elegance, and the Mat Su Dental Clinic) and AAM, AMI, and SSU. These transfers are typically listed as loans, but there are neither documents supporting such loans nor evidence of the terms, if any, of such loans. Such casual and undocumented business transactions, and such confused and ephemeral employment relationships, are not found between unintegrated entities. See, e.g., *Denart Coal Co*., 315 NLRB 850, 852 (1994).

The four criteria for a single employer relationship have been met, and the relationship among AAM, AMI, and SSU is characterized by an absence of an arm's-length relationship. In addition, Irish exercises "overall control of critical matters at the policy level" for AAM, AMI, and SSU. *Emsing's Supermarket*, 284 NLRB 302, 302 (1987). Accordingly, for these reasons and under all of the circumstances of this case, the Respondents, AAM, AMI, and SSU are a single employer and are jointly and severally liable for the violations found herein.

1. Alter ego

Because AAM, AMI, and SSU have been found to be a single employer, it is generally not necessary to decide whether they are alter egos. See *Flat Dog Productions*, 347 NLRB No. 104, slip op. at 1. However, the complaint charges that the Respondents violated Section 8(a)(2) of the Act by recognizing and entering into a collective-bargaining relationship with Iron Workers Local 433. Because the cases in this area most often involve alter ego relationships, the alter ego relationship of AAM, AMI, and SSU will be considered.

A corporation will be deemed the alter ego of a predecessor corporation if there was not "a bona fide discontinuance and a true change of ownership" or if there was "merely a disguised continuance of the old employer." *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106 (1942). The determination of alter ego status is a question of fact for the Board. Id.

The factors that are considered in determining alter ego status include whether "the two enterprises have 'substantially identical' management and supervision, business purpose, operations, equipment, customers, as well as ownership." *Midwest Precision Heating & Cooling*, 341 NLRB 435 (2004); *Crawford Door Sales Co*., 226 NLRB 1144 (1976). Intent to evade responsibilities under the Act is an additional factor that must be considered, but a finding of antiunion animus is not required in order to find an alter ego relationship. *Fugazy Continental Corp*., 265 NLRB 1301 (1982), enfd. 725 F.2d 1416 (DC Cir. 1984). No single factor is determinative and not all the indicia need be present for the Board to conclude that one entity is the alter ego of another. *Standard Commercial Cartage, Inc*., 330 NLRB 11, 13 (1999).

As noted above, AAM, AMI, and SSU have substantially identical management and supervision, business purpose, operations, equipment, customers, and ownership. Insofar as busi-

ness purpose and operations are concerned, Irish split the fabrication and installation functions of AAM by transferring the fabrication responsibilities to AMI and the installation responsibilities to SSU. All three entities operate from the same facility, which is AAM's facility, and therefore, use the same equipment. Indeed, there is no evidence that AMI or SSU ever purchased any equipment or ever used any equipment other than AAM's.

Moreover, the record in this case establishes that Irish formed AMI and SSU in order to circumvent the collective-bargaining agreement and relationship between AAM and the Union. Irish announced to AAM's employees that AAM's fabrication business had been purchased by AMI, and that AMI was not a union company. However, no credible or documentary evidence has ever been produced to corroborate this alleged purchase. The alleged owner of AMI, Mark Cleveland, has never appeared at the facility or communicated with the workers or, as far as this record discloses, communicated with anyone connected with AAM. Indeed, the bank would not accept Cleveland's name on the bank account because his social security number, as provided by Irish, was bogus.

Also, the Respondents have failed to articulate any reason, credible or otherwise, for the formation of SSU, and no reason comes to mind except to allow the last vestige of AAM to be transferred to a nonunionized company. Irish formed SSU within 1 week after she signed an agreement settling the strike in April 2004. SSU performed the same installation work as AAM had performed. The evidence inexorably leads to the conclusion that Irish formed SSU and transferred AAM's installation work to SSU in order to circumvent the collective-bargaining agreement and relationship between AAM and the Union.

Accordingly, AAM, AMI, and SSU are alter egos and are jointly and severally liable for the unfair labor practices found herein.

B. Violations of Section 8(a)(1)

Section 8(a)(1) of the Act provides that it shall be an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7" of the Act. Section 7 guarantees to employees the right to form, join, or assist labor organizations. A violation of Section 8(a)(1) does not depend on the employer's motivation or on the subjective reaction of the employees or on whether the interference succeeded or failed. Rather, the Board's test is whether the charged conduct reasonably tended to interfere with the free exercise of the employee's rights under the Act. *American Freightways Co*., 124 NLRB 146, 147 (1959). In making this determination, all of the circumstances, including the context in which the alleged unlawful statement or action occurred, are considered. *Sunnyside Home Care Project, Inc*., 308 NLRB 346 fn. 1 (1992).

On March 22, Irish told an employee on the floor of AAM's facility that if he had any problems, he should talk to her, not to the stupid union. This directive violates Section 8(a)(1) of the Act because it unlawfully disparages the union and it tends to restrain employees in the exercise of their rights to consult with and be represented by their union. *See Franke's, Inc*., 151 NLRB 532, 535 (1965).

The next day, and after learning that two employees had testified the previous day pursuant to a subpoena from the General Counsel, Irish told AAM's employees that she had disparaged them to the alleged purchaser of AAM's manufacturing business and had told the alleged purchaser "to get the hell out of town." Irish then threatened to move the manufacturing site to another State, stating that she would find jobs for some employees, but other employees—indicating one of the employees that had testified in the hearing—would have to find work elsewhere. These statements violate Section 8(a)(1) of the Act because they threaten closure and loss of jobs for engaging in protected activities.

On July 22 and 23, the weekend of the employees' brief strike, Irish telephoned King and Bieschke. Irish knew that AAM's employees, including King and Bieschke, intended to strike on the weekend. This knowledge is established by Giron's knowledge of the strike, and is reflected in Irish's telephone messages to King and Bieschke. In her telephone messages, Irish threatened to discharge King and Bieschke for going on strike, she did discharge them for going on strike, and she threatened to physically harm King and Bieschke with her firearm and her truck. These threats violate Section 8(a)(1) of the Act.

On July 24, Irish refused to return to her employees their tools, which they needed before they could work for another employer. Irish failed to provide any legitimate reason for withholding the employees' tools. She refused to return the tools only because of her resentment regarding the employees' strike the previous weekend and to retaliate against the employees for going on strike. Irish's refusal to return the employees' tools interferes with the employees' right to engage in protected activities and violates Section 8(a)(1) of the Act.

On July 24 and 25, Irish drove her truck directly at a union representative and, on another occasion, drove her truck directly at an employee. In doing so, Irish assaulted the union representative and the employee because of their protected, concerted activities. Indeed, she continues to drive toward the striking employees in a reckless and threatening manner. There is no justification or excuse for such behavior. These actions are intolerable and run counter to the basic rationale and purpose of the Act to promote the peaceful resolution of labor disputes through negotiation. Irish's actions are illegal and they violate Section 8(a)(1) of the Act.

On July 25, Irish escalated her illegal threats. On this day, she telephoned Bieschke and threatened to kill his child. She repeated her threat three times. To hold only that Irish's contemptible conduct violated Section 8(a)(1) of the Act seems self-evident and insufficient. However, the Board's jurisdiction in this proceeding extends only to the determination of whether Irish's conduct constitutes an unfair labor practice. With this in mind, I find, under the circumstances of this case, that Irish's threats to kill a picketing employee's child interfere with, restrain, and coerce employees in the exercise of rights guaranteed in Section 7. Accordingly, Irish's threats violate Section 8(a)(1) of the Act.

C. Violations of Section 8(a)(5) and (1)

An employer's failure to pay contractual wages, to make contractually required pension and other benefits payments, and to process or accept any contractual grievances constitutes a basic repudiation of the agreement and the bargaining relationship. *Alexander Painting*, 344 NLRB 1346 (2005); *VMI Cabinets and Millwork*, 340 NLRB 1196, 1200 (2003). Indeed, any one of those actions is sufficient to constitute a repudiation of the contract and a violation of Section 8(a)(5) of the Act. See, e.g., *Navigator Communications Systems*, 331 NLRB 1056 (2000); *Scapino Steel Erectors, Inc*., 337 NLRB 992 (2002); *Indiana & Michigan Electric Co*., 284 NLRB 53, 59 (1987).

Beginning in September 2005, AAM stopped processing grievances that were submitted by the Union. Since January 2006, AAM, through Irish, has refused to accept mail from the Union, including all grievances. In approximately December 2005, AAM stopped paying contractually required health, pension, vacation, and other benefits. In the period between January and July 2006, AAM unilaterally changed the work schedule of AAM's employees from 6 a.m.–2:15 p.m. to 6 a.m.–2:30 p.m. by eliminating the employees' last break. Irish also unilaterally imposed a 90-day waiting period before employees became eligible for holiday pay. In July 2006, AAM refused to pay contractually required wages, precipitating a 2-day strike by the employees.

These unilateral changes have a significant impact on the bargaining unit, and effectively and literally repudiate the contract and the bargaining relationship between AAM and the Union. Accordingly, AAM's actions violate Section 8(a)(5) and (1) of the Act.

On February 2, 2006, AAM sent a letter by fax to the Union in which AAM stated, "Since you choose to act illegally by threatening people's lives and the lives of their children, we choose to respond in federal court. Furthermore, AAM, Inc. does not believe we have a legally binding contract and will let a federal judge decide the matter." By this letter renouncing the collective-bargaining agreement, and by AAM's unilateral changes to the employees' terms and conditions of employment, AAM has withdrawn its recognition of the Union as the exclusive collective-bargaining representative of the bargaining unit. Accordingly, AAM's actions violate Section 8(a)(5) and (1) of the Act.

D. Violations of Section 8(a)(3) and (1)

Where an employer is found to have disciplined an employee because of protected activity, it is not necessary to analyze the action pursuant to *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). *Neff-Perkins Co*., 315 NLRB 1229 (1994) (*Wright Line* analysis is unnecessary in a single-motive case).

Irish discharged every member of the bargaining unit who participated in the strike because of their participation in the strike. The discharges occurred on July 22 (for King and Bieschke) and July 24 (for the remaining employees). The strike was an unfair labor practices strike and was called to protest and underscore AAM's unfair labor practices, viz., AAM's renunciation of the agreement and failure to comply with the provisions of the agreement. Accordingly, AAM violated Section 8(a)(3) and (1) of the Act by discharging its employees because of the employees' participation in an unfair labor practices strike.

The Respondents contend that the agreement has a general no-strike clause, and the strike was in violation of this clause. The Respondents argue that the strikers could lawfully be discharged for striking in violation of the agreement. This contention is rejected because a no-strike clause does not waive the employees' right to strike in response to unfair labor practices committed by the employer. *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956).

Moreover, AAM's unfair labor practices are serious violations that are "destructive of the foundation on which collective bargaining must rest." *Arlan's Department Store*, 133 NLRB 802, 808 (1961), quoting *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 281 (1956). AAM disregarded the collective-bargaining agreement and violated its provisions in such fundamental matters as wages, payments of benefits, work schedules, and grievances. Moreover, AAM renounced the agreement. Accordingly, AAM's unfair labor practices were serious enough to preserve the protected nature of the employees' 2-day strike, despite the no-strike provision in the collective-bargaining agreement. *Studio 44, Inc*., 284 NLRB 597 (1987).

For the foregoing reasons, AAM violated Section 8(a)(3) and (1) when it discharged Laurencia Alvarez, John Barrington, John Bieschke, Matthew Burdett, Isaac Corona, Cesar Gasca, Juan Gasca, Juan Gasca, Jr., Glenn Davis, Jose Hernandez, Karl Hughes, Joseph King, Joseph Kline, Victor Mendoza, Felipe Torres, Tirso Vega, and Matt White.

E. Violation of Section 8(a)(2) and (1)

An employer that is under an agreement with an incumbent union may not simultaneously recognize another union as the representative of its employees. The incumbent union is the exclusive representative of the employees, and an employer's simultaneous recognition of another union unlawfully undermines the status of the incumbent union and unlawfully assists the status of the second union in violation of Section 8(a)(1) and (2) of the Act. This prohibition also applies to the alter ego of or single employer with the employer. *Citywide Service Corp*., 317 NLRB 861, 861 (1995) (alter ego); *Regional Import & Export Trucking Co*., 292 NLRB 206 (1988), enf. 914 F.2d 244 (3d Cir. 1990) (alter ego).

AMI and SSU are alter egos of and single employers with AAM. When AMI was "created," there was no change in the fabrication business conducted at AAM's facilities. Indeed, the record fails to establish that AMI ever purchased the fabrication portion of AAM's business. When SSU was created, there was no change in the installation business that had been performed by AAM's employees. The only change resulting from these attempts to transfer AAM's business to other entities was a change in the employees' representative. In the case of AMI, there was no union. In the case of SSU, there was a different union.

SSU's recognition of Iron Workers Local 433 as the representative of its employees simultaneously with AAM's existing recognition of the Union as the representative of the same bargaining unit violates Section 8(a)(2) and (1) of the Act. *City-*

wide Service Corp., 317 NLRB 861, 861 (1995) (alter ego); *Quality Coal Corp*., 139 NLRB 492, 494 (1962) (single employer); *see Rushton & Mercier Woodworking Co*., 203 NLRB 123, 124 (1973), enf. 502 F.2d 1160 (1st Cir. 1974), cert. denied 419 U.S. 996 (1974) (the single employer's recognition of another union violated Section 8(a)(3) of the Act, without regard to specific intent, because it inherently discourages membership in the incumbent union).

CONCLUSIONS OF LAW

1. The Respondent, Advanced Architectural Metals, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Carpenters Local 1780, affiliated with Southwest Regional Council of Carpenters, United Brotherhood of Carpenters & Joiners of America (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. Advanced Metals, Inc. and Steel Specialties Unlimited are alter egos of Advanced Architectural Metals, Inc. (collectively, the Respondents).

4. The Respondents are single employers of the employees in the bargaining units recognized by Advanced Architectural Metals, Inc. and Steel Specialties Unlimited.

5. At all material times, the Union has been the designated exclusive collective-bargaining representative of the Respondents' employees in the following appropriate bargaining unit within the meaning of Section 9(b) of the Act (the Union's bargaining unit):

> All employees performing production and maintenance work within the jurisdiction of the Union, including Shop Foreman, Journeyman Shop Worker, Shop Worker/Trainee and Laborer; and all employees performing field work and construction work outside the shop, excluding all other employees, guards, and supervisors as defined in the Act.

6. The employees in the Union's bargaining unit include the employees in the bargaining unit recognized in the agreement between SSU and Iron Workers Local 433 (Iron Workers bargaining unit). The Iron Workers bargaining unit includes:

> All employees performing all work in connection with field fabrication and/or erection of structural, ornamental and reinforcing steel work coming within the jurisdiction of the Iron Workers Union, excluding all other employees, guards, and supervisors as defined in the Act.

7. The Respondents violated Section 8(a)(1) of the Act by unlawfully telling employees not to talk to the Union; by disparaging employees because they were members of the Union; by threatening to close or move the Respondents' facilities because of employees' protected, union activities; by threatening to discriminate against employees' because of their protected, union activities; by threatening to retain tools belonging to employees because of the employees' protected, union activities; by threatening to discharge employees because of their protected, union activities; by threatening to physically harm employees because of their protected, union activities; by threatening to physically harm the families of employees because of the employees' protected, union activities; and by physically assaulting employees because of the employees' protected, union activities.

8. The Respondents violated Section 8(a)(5) and (1) of the Act by violating the terms of its collective-bargaining agreement with the Union, including refusing to process grievances; refusing to accept mail from the Union containing grievances; refusing to pay contractually required health, pension, vacation, and other benefits; unilaterally changing the work schedule of employees; unilaterally changing the waiting period to qualify for holiday pay; and refusing to pay contractually required wages.

9. The Respondents violated Section 8(a)(5) and (1) of the Act by repudiating its collective-bargaining agreement with the Union.

10. The Respondents violated Section 8(a)(3) and (1) of the Act by unlawfully discharging Laurencia Alvarez, John Barrington, John Bieschke, Matthew Burdett, Isaac Corona, Cesar Gasca, Juan Gasca, Juan Gasca, Jr., Glenn Davis, Jose Hernandez, Karl Hughes, Joseph King, Joseph Kline, Victor Mendoza, Felipe Torres, Tirso Vega, and Matt White.

11. The Respondents violated Section 8(a)(2) and (1) of the Act by recognizing and entering into an agreement with Iron Workers Local 433.

12. The foregoing violations constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that that Respondents unlawfully discharged Laurencia Alvarez, John Barrington, John Bieschke, Matthew Burdett, Isaac Corona, Cesar Gasca, Juan Gasca, Juan Gasca, Jr., Glenn Davis, Jose Hernandez, Karl Hughes, Joseph King, Joseph Kline, Victor Mendoza, Felipe Torres, Tirso Vega, and Matt White, the Respondents will be ordered to offer the employees reinstatement and to make them whole for any loss of earnings and other benefits, in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondents violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union, the Respondents will be ordered to recognize the Union as the exclusive representative of its unit employees and, on request, to meet and bargain in good faith with the Union. The Respondents also shall abide by and give full force and effect to the Agreement, and any automatic renewals or extensions of it, unless and until an agreement is reached or there is an impasse on all mandatory subjects of bargaining.

Having found that the Respondents violated Section 8(a)(5) and (1) of the Act by failing to make payments for or to the Union's various welfare funds as required by the Agreement, the Respondents must make all contractually-required payments that they failed to make, including any additional amounts due to the funds on behalf of the unit employees in accordance with *Merryweather Optical Co*., 240 NLRB 1213

(1979). The Respondents shall reimburse unit employees for any expenses resulting from their failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

Having found that the Respondents violated Section 8(a)(5) and (1) of the Act by failing and refusing to apply the terms and condition of the agreement, the Respondents shall be required to make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondents' failure to comply with the Agreement, in the manner set forth in *Ogle Protection Service*, with interest as prescribed in *New Horizons for the Retarded*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

The Respondents, Advanced Architectural Metals, Inc., Advanced Metals, Inc., and Steel Specialties Unlimited, of Las Vegas, Nevada, their officers, agents, successors, and assigns, shall jointly and severally

1. Cease and desist from

(a) Failing and refusing to recognize Carpenters Local 1780, affiliated with Southwest Regional Council of Carpenters, United Brotherhood of Carpenters & Joiners of America (the Union) and to bargain collectively with the Union as the exclusive bargaining representative of unit employees.

(b) Failing and refusing to apply the terms and conditions of the collective-bargaining agreement between the Union and Advanced Architectural Metals, Inc. (the agreement).

(c) Recognizing or bargaining with Iron Workers Local 433 as the representative of the Respondents' employees unless and until Iron Workers Local 433 is certified by the Board.

(d) Discharging or otherwise discriminating against any employee for supporting the Union or engaging in protected activities.

(e) Threatening employees with adverse employment actions, including discharge, for engaging in union activities.

(f) Telling employees not to talk to the union and disparaging employees because they are members of a union.

(g) Threatening to close or move the Respondents' facilities because of employees' union activities.

(h) Threatening to retain tools belonging to employees and retaining tools belonging to employees because of the employees' union activities.

(i) Threatening to physically harm employees or their families because of their union activities.

(j) Physically assaulting employees because of the employees' union activities.

(k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, whether before or after the expiration of the Agreement, embody the understanding in a signed agreement:

> All employees performing production and maintenance work within the jurisdiction of the Union, including Shop Foreman, Journeyman Shop Worker, Shop Worker/Trainee and Laborer; and all employees performing field work and construction work outside the shop, excluding all other employees, guards, and supervisors as defined in the Act.

(b) Continue in full force and effect the agreement, and any automatic renewals or extensions of it, unless and until an agreement is reached or there is an impasse on all mandatory subjects of bargaining.

(c) Withhold recognition from Iron Workers Local 433 as the representative of the Respondents' employees unless and until the Board has certified Iron Workers Local 433 as their exclusive collective-bargaining representative.

(d) Make all delinquent payments to the Union's health, welfare, vacation, pension, and other funds as required by the agreement, moneys which have not been paid and which would have been paid in the absence of the Respondents' unlawful unilateral discontinuance of such payments in approximately December 2005, and reimburse employees for any expenses resulting from the failure to make the required payments, in the manner set forth in the remedy section.

(e) Make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondents' failure to comply with the Agreement.

(f) Within 14 days from the date of the Board's Order, offer Laurencia Alvarez, John Barrington, John Bieschke, Matthew Burdett, Isaac Corona, Cesar Gasca, Juan Gasca, Juan Gasca, Jr., Glenn Davis, Jose Hernandez, Karl Hughes, Joseph King, Joseph Kline, Victor Mendoza, Felipe Torres, Tirso Vega, and Matt White full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(g) Make Laurencia Alvarez, John Barrington, John Bieschke, Matthew Burdett, Isaac Corona, Cesar Gasca, Juan Gasca, Juan Gasca, Jr., Glenn Davis, Jose Hernandez, Karl Hughes, Joseph King, Joseph Kline, Victor Mendoza, Felipe Torres, Tirso Vega, and Matt White whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(h) Within 14 days from the date of the Board's Order, remove from the Respondents' files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

writing that this has been done and that the discharges will not be used against them in any way.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(j) Within 14 days after service by the Region, post at the Respondents' facility in Las Vegas, Nevada, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 2006.

(k) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. January 26, 2007

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to recognize and bargain with Carpenters Local 1780, affiliated with Southwest Regional Council of Carpenters, United Brotherhood of Carpenters & Joiners of America (the Union) as the exclusive bargaining representative of employees in the following unit:

> All employees performing production and maintenance work within the jurisdiction of the Union, including Shop Foreman, Journeyman Shop Worker, Shop Worker/Trainee and Laborer; and all employees performing field work and construction work outside the shop, excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL NOT fail or refuse to apply the terms and conditions of the collective-bargaining agreement between the Union and Advanced Architectural Metals, Inc. (the agreement), and any automatic renewals or extensions of it.

WE WILL NOT fail or refuse to make contributions to the Union's health, welfare, vacation, pension, and other funds as required by the agreement.

WE WILL NOT recognize or bargain with Iron Workers Local 433 as the representative of our employees unless and until Iron Workers Local 433 is certified by the Board.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting the Union or any other union.

WE WILL NOT threaten employees with adverse employment actions, including discharge, for engaging in union activities.

WE WILL NOT tell employees not to talk to the union nor disparage employees because they are members of a union.

WE WILL NOT threaten to close or move our facilities because of employees' union activities.

WE WILL NOT threaten to retain tools belonging to employees nor retain those tools because of the employees' union activities.

WE WILL NOT threaten to physically harm employees or their families because of their union activities.

WE WILL NOT physically assault employees because of the employees' union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, whether before or after the expiration of the Agreement, embody the understanding in a signed agreement:

> All employees performing production and maintenance work within the jurisdiction of the Union, including Shop Foreman, Journeyman Shop Worker, Shop Worker/Trainee and Laborer; and all employees performing field work and construction work outside the shop, excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL continue in full force and effect the Agreement, and any automatic renewals or extensions of it, unless and until an agreement is reached or there is an impasse on all mandatory subjects of bargaining.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL withhold recognition from Iron Workers Local 433 as the representative of our employees unless and until the Board has certified Iron Workers Local 433 as their exclusive collective-bargaining representative.

WE WILL make all delinquent payments to the Union's health, welfare, vacation, pension, and other funds as required by the agreement, moneys which have not been paid and which would have been paid in the absence of our unlawful discontinuance of such payments in approximately December 2005.

WE WILL reimburse and make whole the unit employees for any expenses, plus interest, they have incurred as the result of our failures to apply the agreement to them and our failures to make the benefit payments described above.

WE WILL, within 14 days from the date of the Board's Order, offer Laurencia Alvarez, John Barrington, John Bieschke, Matthew Burdett, Isaac Corona, Cesar Gasca, Juan Gasca, Juan Gasca, Jr., Glenn Davis, Jose Hernandez, Karl Hughes, Joseph King, Joseph Kline, Victor Mendoza, Felipe Torres, Tirso Vega, and Matt White full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Laurencia Alvarez, John Barrington, John Bieschke, Matthew Burdett, Isaac Corona, Cesar Gasca, Juan Gasca, Juan Gasca, Jr., Glenn Davis, Jose Hernandez, Karl Hughes, Joseph King, Joseph Kline, Victor Mendoza, Felipe Torres, Tirso Vega, and Matt White whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

ADVANCED ARCHITECTURAL METALS, INC. AND ITS ALTER EGOS ADVANCED METALS, INC. AND STEEL SPECIALTIES UNLIMITED